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**Heritage Broadcasting Company of Michigan and
National Association of Broadcast Employees
and Technicians-Communications Workers of
America, AFL-CIO. Case 7-CA-43206**

September 20, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND HURTGEN

Pursuant to a charge filed on July 14, 2000, the General Counsel of the National Labor Relations Board issued a complaint on July 18, 2000, and an erratum thereto dated July 20, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 7-RD-3223. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On August 18, 2000, the General Counsel filed a Motion for Summary Judgment. On August 22, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent denies that it has refused to bargain, and attacks the validity of the certification on the basis of the Board's disposition of certain challenged ballots in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

¹ The Respondent's request that the complaint be dismissed is therefore denied.

FINDINGS OF FACT

I. JURISDICTION

At all times, the Respondent, a corporation, with an office and place of business in Cadillac, Michigan, herein called the Respondent's Cadillac facility, and various broadcast facilities located throughout the State of Michigan, is engaged in the operation of television broadcast stations.

During the calendar year ending December 31, 1999, the Respondent, in the course and conduct of its business operations described above, received gross revenue in excess of \$100,000 and during the same period of time, paid licensing fees in excess of \$50,000 directly to Columbia Broadcasting System, an enterprise located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the decertification election held February 10, 2000, the Union was certified on June 21, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time newsmen, engineers, technicians, director switchers, cameramen, artists, production employees, film employees, film editors, film photographers, and all persons who regularly appear on camera and on microphone employed by the Employer at its facilities located on Dighton Road, Cadillac, Michigan, at Heritage Building, Sault Ste. Marie, and Goetzville, Mt. Pleasant and Traverse City, Michigan, and building maintenance employees as defined in the NLRB Certification 7-RC-13514; but excluding office clerical employees, traffic continuity employees, media consultants, receptionists, producer-directors, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since February 10, 2000, the Union has requested the Respondent to bargain, and, since July 7, 2000, the Respondent has failed and refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after July 7, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting

commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Heritage Broadcasting Company of Michigan, Cadillac, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with National Association of Broadcast Employees and Technicians-Communications Workers of America, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time newsmen, engineers, technicians, director switchers, cameramen, artists, production employees, film employees, film editors, film photographers, and all persons who regularly appear on camera and on microphone employed by the Employer at its facilities located on Dighton Road, Cadillac, Michigan, at Heritage Building, Sault Ste. Marie, and Goetzville, Mt. Pleasant and Traverse City, Michigan, and building maintenance employees as defined in the NLRB Certification 7-RC-13514; but excluding office clerical employees, traffic continuity employees, media consultants, receptionists, producer-directors, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Cadillac, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 7, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 20, 2000

John C. Truesdale,	Chairman
Sarah M. Fox,	Member
Peter J. Hurtgen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with National Association of Broadcast Employees and Technicians-Communications Workers of America, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time newsmen, engineers, technicians, director switchers, cameramen, artists, production employees, film employees, film editors, film photographers, and all persons who regularly appear on camera and on microphone employed

by us at our facilities located on Dighton Road, Cadillac, Michigan, at Heritage Building, Sault Ste. Marie, and Goetzville, Mt. Pleasant and Traverse City, Michigan, and building maintenance employees as defined in the NLRB Certification 7-RC-13514; but excluding office clerical employees, traffic continuity employees, media consultants, receptionists, producer-directors, professional employees, guards and supervisors as defined in the Act.

HERITAGE BROADCASTING COMPANY OF
MICHIGAN